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CR. REV. No.10 of 2002
Against the judgment dated 12. 10. 2001, passed
by Sri Arun Kumar Srivastava, 2nd Addl. Sessions Judge,
Buxar, in S.T. No. 35 of 2001.

Poonam Kumari, D/o Gauri Shankar Srivastava, resident of
Village-Katwan Narayanpur, P.S. Narhi, District- Balia (U.P.)
At present Baba Nagar Syndicate Buxar, P.S. Buxar,
District-Buxar……Petitioner.

Versus

1. The State of Bihar.
2. Paras Yadav, son of Barmeshwar Yadav,
3. Parbati Devi @ Rekha Devi, W/o Paras Yadav.
   Boths resident of Village-Bayasi, P.S. Simri,
   District-Buxar,
   At present Baba Nagar Syndicate Buxar, District. Buxar.

……Opposite Parties.

WITH

CRIMINAL APPEAL No.409 OF 2001(D.B.)

Against the judgment and order dated 12.10.2001
Passed by Sri Arun Kumar Srivastava, IInd Additional
Sessions Judge, Buxar in S.T.No. 35 of 2001.

Paras Yadav, son of Barmeshwar Yadav, resident of
Village-Civil Line, Buxar, P.S. Simari, District, Buxar.

……...Appellant.

Versus

The State of Bihar……Respondent.

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In Cr. Revision No. 10/2002 :- Shri Jagdish Prasad No.1, Advocate.
For the Victim :- Shri Anirudh Mishra, Advocate.

For the appellant in
Cr. Appeal No. 409/2001 :- Shri Ranbir Singh, Advocate
(Amicus Curiae)
For the State :- MS.Sushri Shashi Bala Verma, Addl. P.P.

P R E S E N T

THE HON'BLE SHRI JUSTICE DHARNIDHAR JHA

THE HON'BLE SHRI JUSTICE BIRENDRA PRASAD VERMA

Dharnidhar Jha & B.P.Verma,JJ.

The Criminal revision petition and Cr. Appeal arise out of the judgment dated 12.10.2001

passed by the learned IInd Additional Sessions Judge, Buxar, in Sessions Trial No. 35/01. By the above judgment the learned Judge, while holding the appellant-Paras Yadav, guilty of offence under Sections 376/511 of the Indian Penal Code, acquitted the O.P. No. 3, Parbati Devi @ Rekha Devi of the charge under Section 376/511 of the Penal Code.

2. The informant, Poonam Kumari who was victim of the case and who was examined as P.W.3, preferred the Cr. Revision Petition not only to challenge the order of acquittal passed in favour of Parbati Devi, but also for seeking enhancement of sentence of rigorous imprisonment of five years which was inflicted upon the solitary convict Paras Yadav to ten years or more. The appellant-Paras Yadav has also been impleaded as Opposite Party No. 2 in Cr. Revision Petition. The two matters being connected with each other, we have heard the two matters together and they are being disposed of by this common judgment.

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3. The appellant-Paras Yadav was convicted under Section 376/511 of the Penal Code and was sentenced to undergo rigorous imprisonment for five years. He committed

sexually assault on Poonam Kumari, P.W.3 at about 11 P.M on 02.06.2000, whereas O.P. 3 in Cr. Revision petition, namely, Parbati Devi @ Rekha Devi was acquitted of the charge under Sections 376/511 of I.P.C. for abetting her husband to commit such occurrence.

4. The Fardbeyan (Exhibit-1) of P.W. 3 was recorded at Buxar Police Station on 04. 06. 2000 at 5 A.M. by S.I. Shri Binay Kumar Sharma, the then Incharge of Buxar Police Station. It is alleged that parents of P.W.3 were absent on that particular day, i.e., on 02. 06.2000 from their rented house, although, the victim along with her grand-mother P.W.4 Krishna Srivastava was there. It is alleged by P.W.3 that on the same night, after taking meal, she went to sleep on the roof of the said house along with one Rajmuni Devi and other family members of Paras Yadav. After sometimes, the wife of Paras Yadav told Poonam Kumari to put the lamp inside the house and she did. It has further been stated that Parbati Devi @ Rekha Devi, wife of appellant-Paras Yadav asked the victim Poonam Kumari to go down the stairs. When the victim had reached the ground floor, it is alleged that the appellant-Paras Yadav gagged her

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mouth by one hand while undressing her by the other and, thereafter, committed rape upon her. The victim was asked to put on her clothes and move up stairs to the roof top and she, accordingly, did. During that night, she did not tell any body as to what had happened to her. She divulged the story to other tenants of the house next morning. In the next morning, she told about the occurrence to one Rajmuni Devi (not examined). When parents of Poonam Kumari (P.W.1 and 2) came back on 4th June, 2000, she came to the police station to lodge her Fardbeyan.

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5. On the basis of her Fardbeyan, a First Information Report was drawn up and investigation of the case was handed over to P.W.5, S.I. Sakaldeo Ram. P.W. 5 Sakaldeo Ram took over charge of the investigation as ordered by the Officer-in-Charge, Buxar Police station. He went to inspect the place of occurrence and the victim was found in the house of one Krishna Sah. The other tenant, Rajmuni Devi (not examined) was also found in another part of the same house. The appellant- Paras Yadav and his family members were also residing there in other part of the house, in which the victim was allegedly ravished by

accused Paras Yadav. The house was in the occupation of different persons as pointed out by P.W.5. No one came to support the occurrence as eye witness to the occurrence. But inspite of that, P.W.5, Sakaldeo Ram, I.O. of the case sent the victim for her medical examination by the Doctor and the Doctor did not find any injury or mark of any violence on any parts of the victim.

6. The Investigating Officer found sufficient materials to send up the appellants Paras Yadav and his wife, Parbati Devi @ Rekha Devi for trial. The appellant Paras Yadav was convicted under Sections 376/511 of the Indian Penal Code and Opposite Party No. 3 Parbati Devi @ Rekha Devi was acquitted of the charges framed against her.

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7. The defence of the accused persons as appearing from the cross-examination of the witnesses, shows that the father of the victim, namely, Gauri Shanker Srivastava (P.W.1) was on inimical terms with Paras Yadav due to purchase of some land and probably on being annoyed with the appellant Paras Yadav, a false criminal case was lodged against him.

8. The prosecution examined as many

as six witnesses in proof of charges. P.W. 1 Gaurishankar Srivastava and P.W.2 Munchun Devi have categorically stated that they were not present in the house either on the day or in the night of occurrence. Both of them have stated that their daughter had informed them later on about the incident Thus, what we find is that evidence of P.Ws. 1 and 2 is of no avail to the prosecution.

9. P.W.4 Smt. Krishna Srivastava is the grand-mother of the victim P.W. 3 Poonam Kumari, who was admittedly present in the night of the occurrence. She has supported the allegation of her grand-daughter being sexually assaulted and ravished by accused Paras Yadav. Hence, we find that the occurrence stated by P.W. 4 is completely contrary to what has been stated by P.W. 3 in her evidence as P.W. 4 stated that the victim was dragged and taken by the appellant for committing rape upon her which is never the story of the prosecution. Besides, her conduct of keeping a stony silence inspite of having come to know about it, and not even informing any one is a riddle.

10. P.W. 3 Poonam Kumari has stated that she was asked by Parbati Devi @ Rekha Devi. to go down the stairs as required by appellant-

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Paras Yadav where, firstly, she was gagged and, thereafter, she was undressed so as to be raped. P.W. 4 told that the victim was dragged after being gagged into the house by appellant-Paras Yadav and she was raped by the appellant Paras Yadav. She has stated that she learnt about this fact from P.W.3 her grand-daughter. But on considering the evidence of P.W.3, Poonam Kumari, we find that she had not stated anywhere in the statement that she had narrated the incidence to her grand-mother on the day of occurrence. Still, we presume that the victim girl might have divulged the facts, but still there is no whisper of the above fact in her evidence. In evidence, Poonam P.W. 3 had very categorically stated that she narrated about the incidence to some tenants of the house and has named one Rajmuni Devi. She has named her grand-mother as one of the persons to whom she narrated about the occurrence. Thus the claim of P.W.4 Krishna that she learnt about the occurrence from the victim girl is palpably in doubt.

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11. As regards the victim girl (P.W.3) of the case, we are very much conscious that the evidence of the victim in the case itself is sufficient to sustain the conviction, because the victim of

such offence is at par with an injured witness whose evidence is very difficult for the court to discard. Moreover, the other reasons for accepting her evidence as pointed out by various courts is that it is highly unacceptable that a tendered child aged 8-10 years would come forward to depose against innocent persons. Besides the third reason for acting upon such evidence, as, has been pointed out consistently, is that no father shall ever wish to put his daughter's life into jeopardy by making false allegation of she being raped.

12. Poonam Kumari, the victim of the occurrence has stated that she was twitched by Paras Yadav on her hand and she woke up. She stated in her cross-examination that she firstly thought that it could be a bite by an insect and as such she did not react. But later on, accused Paras Yadav undressed her and committed rape on her.

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13. The Witness has stated in paragraphs 21 and 24 that two ladies were sleeping in a room near the room in which the victim was raped. None came to support. It has come in evidence in paragraph 26 of P.W.3 that electric power had gone off, as such, she was asked to

bring a lamp. The occurrence took place at 11 P.M. and in such a situation when an odd condition was prevailing as a result of electric line being cut off, one could very well imagine that persons in the surrounding must be awoke then as a result of heat causing the disruption in sleep. The victim girl stated that she was covered by the appellant Paras Yadav while taking her inside the room and she was ravished. She did not tell the story to anyone in that night as appearing in her examination in chief.

14. Not only this, we consider the initial part of the prosecution story as to how the victim girl was lured and she came down the stairs. We find that the victim was asked to take the lamp down the stairs. This fact is assigned to wife of Paras Yadav, namely, Parbati Devi @ Rekha Devi. But it has come in the evidence of P.W. 3 in paragraph 1 that when the victim came down the stairs to bring the lamp, the occurrence took place. Thus is the reversal of the initial story. P.W. 1 the father of P.W. 3 tells a somewhat different story that P.W.3 was dragged-gagged and was raped by Paras after being taken inside a room.

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15. As regards the manner of

occurrence, the evidence has come in paragraphs 39 and 40 as also in paragraphs 42 and 43 of P.W. 3 and as per her evidence, there appears a probability that she had been criminally assaulted with such brutality that she was bleeding from her private part, which she had washed out. The victim was examined by the Doctor P.W.6 who did not find any blood on or around her private parts. She herself could not even show any blood stains on any part of her body. The offence was committed, according to P.W.3 in Paragraph 54, with such brutal force by a man aged about 35 years with a girl aged about 8-10 years for about an hour as could be found in that statement of the girl. But, P.W. 6 Dr. Nilam Sinha has stated that there was no mark of violence on her private parts and there was no blood stains on her clothes. The Doctor examined her private parts and found that it was perfectly intact and there was no injury on her private parts. The microscopic examination of the swab taken out of her vagina also did not reveal any presence of spermatozoa.

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16. The Investigating Officer of the case P.W. 5 has stated that he had observed some marks of injury on the person of the victim and,

therefore, he sent her for being medically examined by a Doctor. P.W. 6 Dr. Nilam Sinha, did not find any mark of violence or injury anywhere on the person of P.W.3 Poonam Kumari. On the reverse page of the Injury report of the victim Poonam Kumari which is Exhibit-2, the medical examination report prepared has been mentioned. We have looked at that part of the document and find that P.W.5, S.I. Sakaldeo Ram, did not find any mark of violence or injury on the person of P.W.3 victim Poonam Kumari and, this appears making a false statement about it.

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17. The conduct of the child could be that she did not narrate the incident to any of her neighbours or persons who were present in the house in that very night of the occurrence which may appear from evidence of P.W.3 where she has narrated in paragraph 8 that at least 20-30 persons were present on the roof of the house. This appears to be quite unacceptable. The victim has stated that she did not raise any cry nor did she resist. These facts are not acceptable and for this reason we come to a conclusion that the victim was not at all telling the truth to the court. There could be some probability that she might be set up

for any reason against accused Paras Yadav, firstly, by filing the case and then getting it to be supported by giving her evidence in order to implicate him due to enmity.

18. After having considered the factual matrix and the submissions advanced before us, what we find most distressing is that inspite of having recorded a finding that the offence under Section 376 of Indian Penal Code was not attracted in the light of the evidence, the trial Judge was recording the conviction of the appellant-Paras Yadav under Section 376/511 of the Indian Penal Code. When the charges were not being established as may appear from the prosecution evidence itself, then, how the learned Trial Judge could convict a person for having attempted to commit rape when there is such infirmities in evidence of prosecution witnesses as we have just pointed out.

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19. For the above reasons, we acquit the appellant Paras Yadav and set aside the sentence passed against him by the learned Trial Court. The appeal is, accordingly, allowed. The appellant Paras Yadav is discharged from the liabilities of bail bond.

20. For the same reasons, we find that there is no merit in Cr. Revision petition also and the same is also dismissed.

Patna High Court,
The 5th March, 2010
NAFR/m.p.

(Dharnidhar Jha, J.)

(Birendra Prasad Verma,J.)

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